

## **CIVIL SERVICE COMMISSION MINUTES**

**February 3, 1999**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gloria Valencia-Cothran, President  
Mary Gwen Brummitt  
Gordon Austin

Comprising a quorum of the Commission

Absent were:

Roy Dixon  
Sigrid Pate

Larry Cook, Executive Officer  
Ralph Shadwell, Deputy County Counsel  
Joy Kutzke, Reporting

**CIVIL SERVICE COMMISSION MINUTES**  
**February 3, 1999**

1:30 p.m.      CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION: Room 358, 1600 Pacific Highway,  
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
6,7,8,9,10,11			

COMMENTS Motion by Austin to approve all items not held for discussion; seconded by Brummitt. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

- a. Commissioner Brummitt: Daniel E. Marshall, Esq., on behalf of **Martha Burdette** appealing an Order of Demotion from the Health and Human Services Agency.
- b. Commissioner Austin: James Gattey, Esq., on behalf of **Marco Carreon** from an Order of Termination from the Sheriff's Department.
- c. Commissioner Pate: Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Louis Lopez** alleging disability discrimination by the Department of General Services.

**REGULAR AGENDA**

NOTE: Five total minutes will be allocated for input on Agenda Items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of January 20, 1999.

**Approved.**

## CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin as hearing officer in the appeal of **Manuel Perez** appealing an Order of Suspension from the Sheriff's Department.

**Confirmed.**

3. Commissioner Brummitt as hearing officer in the appeal of **Frank Cannon** appealing his reassignment as a Detective in the Sheriff's Department. (See also No. 4 below.)

**Confirmed.**

## INVESTIGATIONS

4. David Lopez, DSA Representative, on behalf of **Frank Cannon**, Deputy Sheriff, requesting an investigation into the conduct and operations of the San Diego County Sheriff's Department and its actions in handling Deputy Cannon's case. (See also No. 3 above.)

RECOMMENDATION: Deny request without prejudice.

**Motion by Brummitt to approve staff recommendation; seconded by Austin. Carried.**

## STIPULATED AGREEMENT

5. Commissioner Austin: **Enex Caro** appealing an Order of Pay Step Reduction from the Sheriff's Department.

RECOMMENDATION: Approve agreement.

**Staff recommendation approved.**

## DISCIPLINARY FINDINGS

6. Commissioner Brummitt: Daniel E. Marshall, Esq., on behalf of **Martha Burdette** appealing an Order of Demotion from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Daniel Marshall, Esq., addressed the Commission on behalf of Martha Burdette regarding the impact the Commission's decision has on an employee in the context of an organization that is in the process of privatization, layoffs and merging of departments.

Employee was charged with Cause I - incompetence (failure to perform duties expected of a Supervising Clerk); Cause II - inefficiency (lack of attention to detail, poor judgment, unclear verbal and written communications). Employee has been employed by the County

for approximately 28 years. Employee was most recently employed as a Supervising Clerk in the Health and Human Services Agency until her recent demotion. Long-standing areas of weaknesses became magnified in her role as Supervising Clerk. This hearing officer concludes that despite Employee's positive work attributes, she is incapable of satisfactorily performing as a Supervisory Clerk at this time. The charges described in Causes I and II of the Order of Demotion, except for I(B)(2) and (4) were proven to be true. Employee is guilty of Cause I, incompetence; and Cause II, inefficiency. It is therefore recommended that the Order of Demotion be affirmed, and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations;  
seconded by Austin. Carried.**

7. Commissioner Austin: James Gattey, Esq., on behalf of **Marco Carreon** from an Order of Termination from the Sheriff's Department.

#### FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I -- negligence which resulted in damage to public property (collision with patrol vehicle); and Cause II - acts incompatible with and/or inimical to the public service. Employee has been employed by the Sheriff's Department for approximately 7½ years. He was terminated as the result of a collision while driving a patrol car in pursuit of a suspect. There were no injuries and the property damage was minor, however, this collision was the fifth vehicular incident for which Employee received discipline within a period of less than a year. Testimony at the Commission hearing concluded that the Department based its decision to terminate Employee not only on the fact or frequency of the traffic incidents, but on the belief that Employee was reckless and imprudent in his driving. The Department failed to produce evidence in support of these allegations. Oral and written evidence indicated that Employee actively sought additional training and constructive criticism regarding his driving. The Department failed to exhaust reasonable alternatives such as additional training and/or pairing Employee with another deputy. Employee's performance appraisal reflects an over-all standard rating which conflicts with the Order of Termination. It is concluded that Employee is guilty of Cause I and is not guilty of Cause II. It is therefore recommended that the Order of Termination be modified to a five work-day suspension; that Employee be awarded back pay, benefits, and interest from the date of termination until the date in which he returns to work minus any wages he received from outside employment and minus the five work-day suspension referred to above; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations;  
seconded by Brummitt. Carried.**

## COMPULSORY LEAVE

### Findings

8. Commissioner Valencia-Cothran: Robert Waller, Jr., Esq., on behalf of **Ruth White**, appealing an Order of Compulsory Leave from the Registrar of Voters.

#### FINDINGS AND RECOMMENDATIONS:

Employee has been employed by the Registrar of Voters as a Senior Clerk for approximately eight years. Employee had performed well as documented by performance appraisals and confirmed by her appointing authority until one year ago. Employee's performance began to decline and confrontations with supervisors became more frequent beginning in 1998. Employee received oral warnings, written warnings, and was reprimanded regarding alleged performance transgressions. The Department attempted reassignment of Employee's physical location and duties in order to relieve her from the stress she apparently was receiving in her regular assignment. Employee was referred for a fitness for duty exam wherein it was determined that she was unable to perform the essential functions of her job. The Department placed Employee on Administrative Leave and Family Leave. Employee contended she had been placed on Compulsory Leave because she was away from work against her will and, therefore, attempted to file an appeal with the Commission office; which was determined to be premature. Employee was referred for further fitness for duty evaluations which resulted in further findings that she was unable to perform essential job functions. Employee was placed on Compulsory Leave at which time her appeal proceeded to hearing. It is this hearing officer's conclusions and recommendations that: The Order of Compulsory Leave commencing on January 6, 1999 be affirmed. Employee was properly placed on Compulsory Leave commencing on that date and the Compulsory Leave should continue until such time that employee is deemed able to perform her essential job functions by the appropriate expert(s); a determination be made by the Civil Service Commission that Employee was improperly placed on Family Leave commencing on September 11, 1998 to December 7, 1998. Employee be made whole, i.e., restoration of leave balances and back pay, if any, for the period September 11, 1998 to December 7, 1998; and this proposed decision shall become effective upon the date of approval of the Civil Service Commission.

**Motion by Valencia-Cothran to approve Findings and Recommendations; seconded by Austin. Carried.**

## DISCRIMINATION MATTERS

### Findings

9. Commissioner Pate: Deborah Olberding, S.E.I.U. Local 2028, on behalf of **Louis Lopez** alleging disability discrimination by the Department of General Services.

## FINDINGS AND RECOMMENDATIONS:

Appellant filed a complaint with the Commission alleging disability discrimination by the Department of General Services when he was failed on probation from his position as an offset Equipment Operator. This hearing officer has concluded that:

A. Appellant has dyslexia which is a disability affecting the major life activity of learning.

B. Appellant adequately informed his supervisors of his disability, the limitations caused by his disability, and of his need for reasonable accommodations.

C. Appellant is able to perform the essential job functions of Offset Equipment Operator, Class 3050, with reasonable accommodations.

D. The Department failed to make reasonable accommodations to the limitations caused by Appellant's disability. Moreover, the Department failed to even engage in a flexible interactive two way communication process with Appellant regarding the limitations caused by his disability and any possible accommodations which might assist him in performing the essential job functions.

E. The Department failed to prove that it had a legitimate nondiscriminatory reason for dismissing Appellant during the probationary period.

F. The Department discriminated against Appellant on the basis of disability in violation of San Diego County Charter Section 901 when it dismissed him during the probationary period.

## RECOMMENDATIONS

Based on the findings and conclusions stated above, I recommend the following proposed decision that:

1. The Department of General Services discriminated against Appellant on the basis of disability in violation of San Diego County Charter Section 901 when it dismissed him during the probationary period;

2. Appellant be reinstated to the class of Offset Equipment Operator, Class 3050, in the Department of General Services to begin a new probationary period of six months.

3. The Department of General Services engage in a flexible interactive two way communication process with Appellant regarding

the limitations caused by his disability and his need for reasonable accommodations.

4. The Department, if possible, assign or arrange for Appellant to transfer to a position which does not have Appellant's former supervisors in the chain of command.

5. The Department of General Services Personnel Officer, along with staff of the Department of Human Resources, monitor the process which Appellant's supervisors use in dealing with Appellant's disability to ensure that he is properly dealt with.

6. Back pay, benefits and interest be awarded from the date of termination to the date of Appellant's return to work.

7. This proposed decision become effective upon the date of approval by the Civil Service Commission.

**Motion by Brummitt to approve Findings and Recommendations; seconded by Austin. Carried.**

## **SELECTION PROCESS FINDINGS/COMPLAINTS**

### **Complaints**

10. S.E.I.U. Local 2028 on behalf of **Robert Gould, Robert Grable and Edward Even** appealing their non-selection for promotions to Fleet Regional Manager and requesting a Rule XI investigation re alleged improper personnel actions by the Department of General Services.

RECOMMENDATION: Deny requests.

(Continued from CSC meetings of 12/16/98 & 1/20/99.)

Dung Tran, S.E.I.U. Local 2028, addressed the Commission on behalf of appellants concerning the newly created classification which resulted in alleged improprieties in the selection process as it related to the layoff procedure. Anthony Albers, Deputy County Counsel, responded on behalf of the Department of General Services that actions taken by the Department were consistent with the Rules.

**Motion by Brummitt to deny appellants' requests for Rule X appeals and Rule XI investigations; seconded by Austin. Carried.**

11. S.E.I.U. Local 2028 on behalf of **Dave Baldwin, Thomas Watson** and **Gerald Tanson** appealing their non-selection for promotions to Fleet Team Leader and requesting a Rule XI investigation re alleged improper personnel actions by the Department of General Services.

RECOMMENDATION: Deny request. (Continued from CSC meeting of 1/20/99) Dung Tran, S.E.I.U. Local 2028, addressed the Commission on behalf of appellants concerning the newly created classification which resulted in alleged improprieties in the selection process as it related to the layoff procedure. Anthony Albers, Deputy County Counsel, responded on behalf of the Department of General Services that actions taken by the Department were consistent with the Rules.

**Motion by Brummitt to deny appellants' requests for Rule X appeals and Rule XI investigations; seconded by Austin. Carried.**

### **Findings**

12. **Sergio L. Velazco** appeal of removal of his name by DHR from the employment list for Correctional Deputy Probation Officer I.

RECOMMENDATION: Ratify item No. 12. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Staff recommendation approved.**

### **OTHER MATTERS**

#### **Performance Appraisals**

13. Valerie McCan-Murrell, S.E.I.U. Local 2028, on behalf of **Sandra L. Cosio**, Medical Records Clerk in the HHSA, requesting the sealing of her performance appraisal covering the period March 19, 1998 to June 19, 1998.

RECOMMENDATION: Grant request.

**Staff recommendation approved.**

#### **Extension of Temporary Appointments**

14. Health and Human Services Agency

12 Protective Services Worker I(s) (See attached list.)



15. Auditor and Controller

1 Junior Accountant (Raul Carrillo)

RECOMMENDATION: Ratify item Nos. 14 and 15.

**Staff recommendation approved.**

16. Ratification of Julian Lichter, M.D. and Robert Brizendine, Ph.D. as additional names to the list of medical and psychological providers to be used for fitness for duty evaluations at the request of the Department of Human Resources.

RECOMMENDATION: Ratify providers.

**Staff recommendation approved.**

17. Public Input.

ADJOURNMENT: 3:30 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 17, 1999.**